IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2007

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1311 of 2007

R.Thavamani .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary
Prohibition & Excise Department
Fort St.George, Chennai-9.

2. The District Collector
and District Magistrate
Nagapattinam District
Nagapattinam. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus directing the respondents to produce the detenue Mani, before this Honourable Court now confined in Central Jail, Trichy and call for the records of the Respondents relating to the order of detention vide proceeding COC No.47/2007 dated 26.8.2007 and set aside the same and set him at liberty.

For Petitioner : Mr.Ponpandiyan

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Mani, brother-in-law of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2.1. The order of detention dated 26.8.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.435 of 2007 on the file of Velippalayam Police Station for the offences punishable under Sections 4(1)(aaa), 4(1)(i) read with 4 (1-A) of the Tamil Nadu Prohibition Act. On 14.8.2007, the Inspector of Police, Nagapattinam Town Police Station and police party proceeded on prohibition raid and found the detenu selling illicit arrack to unknown person. The detenu was arrested on the spot and the contraband was seized. The samples were sent for chemical analysis and report reveals that the sample of arrack contained 5.4%mg of Atropine per 100 ml, and the same would endanger life.

2.2. Apart from the above, the detaining authority also took note of three adverse cases pending against the detenu, viz., Crime No.173 of 2007 on the file of Velipalayam Police Station for the offences punishable under Sections 4(1)(aaa) of the Tamil Nadu Prohibition Act; and Crime Nos.879 and 1317 of 2007 on the file of the Nagapattinam Prohibition Enforcement Wing for the offences punishable under Sections 4(1)(aa) and 4(1)(aaa) of the Tamil Nadu Prohibition Act respectively.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. Challenging the said detention, the brother-in-law of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the detenu before this Court, now confined in Central Prison, Trichy and to call for the records of the respondents relating to the order of detention vide proceedings COC No.47 of 2007, dated 26.8.2007, to set aside the same and to set the detenu at liberty.

4. Heard the learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

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5. The only contention advanced by the learned counsel for the petitioner is that the representation dated 30.8.2007 sent by the detenu has not been considered till date and the same has rendered the detention illegal.

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6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached

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the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 26.8.2007. A representation was made to the Government on 30.8.2007 and the same was received by it on 7.9.2007. Remarks were called for from the detaining authority on 8.9.2007. But, till date, the remarks of the detaining authority have not been received by the Government for considering the representation and disposing of the same. There is a lapse of nearly three months. There is no convincing explanation on behalf of the State for the said delay. We find some force as well as substance in this contention.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

The delay in considering the representation which stands unexplained is fatal to the detention order attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention

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order dated 26.8.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Secretary to Government
State of Tamilnadu
Prohibition and Excise Department
Fort St.George, Chennai - 9.

2. The District Collector
and District Magistrate
Nagapattinam District
Nagapattinam.

3. The Public Prosecutor
High Court, Madras.

4. The Superintendent
Central Prison, Tiruchirapalli.

5. The Joint Secretary to Government
Public (Law and order) Fort St. George,
Madras-9.

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